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March 28, 2022

VIA ECF

Hon. Vernon S. Broderick  
United States District Court  
Southern District of New York  
Thurgood Marshall United States Courthouse  
40 Foley Square, Room 415  
New York, New York 10007

APPLICATION GRANTED

SO ORDERED 

VERNON S. BRODERICK

U.S.D.J. 04/06/22

The parties are directed to Rule 5.B. of my Individual Rules & Practices in Civil Cases and to meet and confer as necessary to determine if the written responses can be filed in redacted form on ECF.

Re: *Spectrum Dynamics Medical Limited v. General Electric Company, et al.*,  
Case No.: 18-cv-11386 (VSB)

Dear Judge Broderick:

We represent Defendants in the above-referenced action. We write pursuant to Rule 5.B of Your Honor's Individual Practices in Civil Cases to respectfully request permission to file under seal Defendants' Letter Motion for Extension of Time and Exhibits 1 and 2 thereto, which are being filed today, and contain information that Plaintiff claims constitutes Highly Confidential Information under the parties' Stipulated Confidentiality and Protective Order (Dkt. 156).

The presumption of public access to judicial documents can be overcome if countervailing factors warrant confidentiality. *See Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 120 (2d Cir. 2006); *see also Nixon v. Warner Commc'ns Inc.*, 435 U.S. 589, 598 (1978). Sealing of records may be justified to preserve "higher values," including the need to protect an entity from competitive injury. *Lugosch*, 435 F.3d at 124; *see also Tropical Sails Corp. v. Yext, Inc.*, No. 14-cv-7582, 2016 U.S. Dist. LEXIS 49029, at \*10-11 (S.D.N.Y. Apr. 12) (risk of "competitive injury is sufficiently serious to warrant protection" of proprietary business information). Consistent with this, courts routinely permit sealing and redaction of competitively sensitive proprietary business information or information subject to a claim of privilege. *See, e.g., Louis Vuitton Malletier S.A. v. Sunny Merch. Corp.*, 97 F. Supp. 3d 485, 511 (S.D.N.Y. 2015); *Encyclopedia Brown Prods., Ltd. v. Home Box Office, Inc.*, 26 F. Supp. 2d 606, 614 (S.D.N.Y. 1998); *see also Nixon*, 435 U.S. at 598 (recognizing need to seal information that might "harm a litigant's competitive standing").

Here, Defendants' Letter Motion and the exhibits thereto contain references to information that Plaintiff asserts is its competitively sensitive and proprietary information that, if disclosed, could pose a substantial risk of harm. This is the sort of sensitive information that courts consistently protect from disclosure. *See, e.g., Ferring B.V. v. Allergan, Inc.*, No. 12-cv-2650, 2017 U.S. Dist. LEXIS 150239, at \*16 (S.D.N.Y. Sep. 7) (sealing documents containing proprietary information); *Encyclopedia Brown*, 26 F. Supp. 2d at 612 (sealing documents reflecting sensitive trade secret information).

For these reasons, and although Defendants dispute Plaintiff's assertion that any of the information is Highly Confidential Information, out of an abundance of caution, Defendants

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respectfully request permission to file under seal Defendants' Letter Motion for Extension of Time and Exhibits 1 and 2 thereto.

Very truly yours,

/s/ Marla R. Butler

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*Party Yaron Hefetz*

cc: All Counsel of Record via ECF